

**CHAPTER 33 GENERAL RULES: FUNERAL DIRECTORS, VETERINARIANS,
AND INTERIOR DESIGNERS**

Secs.	
3300	Applicability
3301	Application for a License
3302	Examination
3303	Cheating on an Examination
3304	Issuance of a License
3305	Renewal of a License
3306	Term of a License
3307	Regulation of Applicants for and Holders of Certificates or Registrations
3308	Reinstatement of an Expired License
3309	Reinstatement after Revocation
3310	False or Misleading Communications and Advertising
3311	Referral for Prosecution of Persons Committing Certain Offenses
3312 - 3313	[Reserved]
3314	Complaints: Investigations
3315	Notice of Intended Action and Opportunity for a Hearing
3316	Failure to Request a Hearing or Failure to Appear
3317	Hearing Notice Procedures
3318	Service
3319	Representation
3320	Subpoenas
3321	Motions and Other Pleadings
3322	Settlement Conferences
3323	Conduct of Hearings
3324	Evidence at the Hearings
3325	Burden of Proof
3326	Conduct of Parties and Counsel at the Hearing
3327	Hearings by Panels of a Board
3328	Hearings by Administrative Law Judges
3329	Record of a Hearing
3330	Decision of a Board
3331 - 3333	[Reserved]
3334	Reconsideration
3335	Judicial Review: Record on Appeal
3336	Administrative Appeals to a Board of a Decision of an Administrative Law Judge
3337	Computation of Time
3399	Definitions

3300 APPLICABILITY

- 3300.1 This chapter shall apply to applicants for and holders of a license to practice a profession or occupation regulated by the following boards:
- (a) The Board of Funeral Directors for the District of Columbia, established by §4 of the District of Columbia Funeral Services Regulatory Act of 1984, D.C. Law 5-84, D.C. Code §2-2803 (1987 Supp.);
 - (b) The Board of Veterinary Examiners for the District of Columbia, established by §6 of the Veterinary Practice Act of 1982, D.C. Law 4-171, D.C. Code §2-2725 (1987 Supp.); and
 - (c) The Board of Interior Designers, established by §3 of the District of Columbia Interior Designer Licensure Act of 1986, D.C. Law 6-172, D.C. Code §2-3402 (1987 Supp.).
- 3300.2 This chapter shall be supplemented by the District of Columbia Administrative Procedure Act, D.C. Code §§1-1501 to 1-1511 (1987 Repl. Vol.), the Acts listed in §3300.1, and rules promulgated pursuant to those Acts.
- 3300.3 Other chapters of this title applying to individual boards promulgated pursuant to an Act listed in §3300.1 shall prevail over this chapter in the event of a direct and irreconcilable conflict with this chapter.

AUTHORITY: Unless otherwise noted, the authority for this chapter is §4(1) of the D.C. Funeral Services Regulatory Act of 1984, D.C. Law 5-84, D.C. Code §2-2803(l) (1987 Supp.), and Mayor's Order 87-186; §6(1) of the Veterinary Practice Act of 1982, D.C. Law 4-171, D.C. Code §2-2725(m) (1987 Supp.), and Mayor's Order 86-117; and §5(3) of the D.C. Interior Designer Licensure Act of 1986, D.C. Law 6-172, D.C. Code §2-3404(3) (1987 Supp.) and Mayor's Order 87-277.

SOURCE: Final Rulemaking published at 35 DCR 3488 (May 13, 1988).

3301 APPLICATION FOR A LICENSE

- 3301.1 An applicant for a license under an Act listed in §3300.1 shall do the following:
- (a) Submit a completed application on the prescribed form to the board regulating the occupation or profession;
 - (b) Have the application sworn to before a notary public;
 - (c) Submit with the application two (2) recent passport-type photographs of the applicant's face measuring two inches by two inches (2" x 2");
 - (d) Pay the required application fee; and
 - (e) Arrange for the submission directly to a board of all required supporting credentials, documents, and materials, including transcripts, references, and test scores.
- 3301.2 A board may not presume qualifications that are not shown on an application.
- 3301.3 A board may refuse to act on an application and may require the applicant to submit a new application if the application contains incomplete or evasive information.

3301.4 If a board determines that an application is not in compliance with §3301.1, the Director shall return the application unless the board determines that the deficiency is minor. If the application is returned, the Director may, in the Director's discretion, return the application fee to the applicant.

3301.5 If a board determines that an application is not in compliance with §3301.1, but that the deficiency is minor, the Director shall send a notice of the deficiency to the applicant. Upon receipt of the notice, the applicant shall correct the deficiency within thirty (30) days or other period specified in the notice.

3301.6 If the applicant fails to correct the deficiency within the required period, the application shall lapse and the applicant is required to submit a new application and pay the required fees to be considered for a license.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3489 (May 13, 1988).

3302 EXAMINATION

3302.1 An applicant desiring to take a national examination shall submit an application in compliance with §3301.1 to a board regulating the occupation or profession at least ninety (90) days prior to the date of that examination.

3302.2 An applicant who has previously taken that examination shall submit such an application at least sixty (60) days prior to the date of that examination.

3302.3 An applicant may not take the national examination unless the materials required by §3301.1(e) are received by a board at least forty-five (45) days prior to the date of that examination. The board may, in its discretion, permit an applicant to take an examination on a provisional basis although transcripts or other materials have not been received within this period.

3302.4 A board may, in its discretion, reduce the required periods in §§3302.1 and 3302.2.

3302.5 The Director shall notify each applicant of the date, time, and place of the examination and of any examination procedures at least ten (10) business days prior to the date of the examination.

3302.6 The Director shall arrange for suitable space for an examination, designate persons to proctor the examination, and provide for adequate security to ensure the integrity of the examination process.

3302.7 The Director shall notify each applicant whether the applicant passed the examination as soon as practicable after the Director receives the examination results unless the applicant is notified directly by a testing service.

3302.8 An applicant who fails an examination may not challenge the results of the examination before a board or the Director.

3302.9 If a testing service informs a board in writing that it erroneously determined that an applicant failed an examination and certifies that the applicant passed the examination, the board shall grant a license to the applicant if the applicant has met all other qualifications for a license and has paid all required fees.

3302.10 If an applicant does not take an examination, the Director shall not refund the application fee or credit it to another examination unless a board determines that the applicant was unable to take the examination for good cause. For purposes of this subsection, "good cause" includes the following:

- (a) Illness or injury; or
- (b) Death or serious illness of or injury to a member of the applicant's immediate family.

3302.11 A board, in making a determination under §3302.10, may require a doctor's certificate or other satisfactory evidence of illness or injury.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3490 (May 13, 1988).

3303 CHEATING ON AN EXAMINATION

3303.1 No person shall cheat or assist another in cheating on an examination required by an Act listed in §3300.1 or rules promulgated pursuant thereto.

3303.2 As used in this section, "cheating" includes, but is not limited to, the following:

- (a) Communication relating to the examination between applicants inside or outside of an examination room or copying another applicant's answers while an examination is in progress;
- (b) Communication relating to an examination with others outside of an examination room while the examination is in progress;
- (c) Substitution by an applicant of another person to sit in an examination room in the applicant's place; and
- (d) Use of crib sheets, text books, or other materials not authorized by a board inside or outside an examination room while an examination is in progress.

3303.3 If a person designated to proctor an examination suspects that an applicant is cheating or has cheated on the examination, the person shall do the following:

- (a) If necessary, seat the applicant in a segregated location for the remainder of the examination;
- (b) Keep a record of the applicant's seat location and identification number, and the names and identification numbers of the applicants on either side of the applicant;
- (c) Confiscate any materials or devices that are suspected of being used by the applicant to cheat on the examination;
- (d) Permit the applicant to complete the examination; and
- (e) Notify the testing service, the board, and the Director that the applicant is suspected of cheating and provide a board with a copy of the examination booklet and any evidence obtained by the person proctoring the examination.

3303.4 If a board has cause to believe that an applicant has cheated or has failed to comply with an instruction of a proctor given pursuant to §3303.3, it may propose to deny a license, impose a civil fine, or take other actions under this chapter.

3303.5 If a board determines that an applicant cheated on an examination, in addition to any other consequences, the applicant shall not be eligible to take another examination for a period of one (1) year from the date of the decision of a board, or other period established by a board in its order.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3491 (May 13, 1988).

3304 ISSUANCE OF A LICENSE

3304.1 After a determination by a board that an applicant meets all of the requirements for a license, including the payment of all required fees, the Director shall issue the license to the applicant.

3304.2 The Director shall indicate on the face of a license any restriction thereon required by a board.

3304.3 An applicant for a license who is notified that the application is approved shall pay the required license fee within one hundred and eighty (180) days of the date of the initial notice.

3304.4 The Director shall send the notice by first class mail to the applicant at the applicant's address on file with the Director. If the applicant fails to pay the required fee within this period, the application shall lapse and the applicant shall be required to submit a new application and pay the required application fees to be eligible for a license.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3492 (May 13, 1988).

3305 RENEWAL OF A LICENSE

3305.1 The Director shall send a renewal application to a practitioner by first class mail to the practitioner's address on file with the Director at least sixty (60) days prior to the expiration of the license.

3305.2 The practitioner shall meet all of the requirements for renewal prior to the issuance of the renewal.

3305.3 A practitioner shall notify the Department in writing of any change of home or business address within thirty (30) days of the change of address.

3305.4 The failure of a practitioner to receive the notice required by §3305.1 does not relieve the holder of the responsibility of renewing the license.

3305.5 A practitioner who fails to renew prior to the expiration date may renew the license within sixty (60) days after expiration upon paying the required late fee. Upon renewal, the practitioner shall be deemed to have possessed a valid license during the period between the expiration of the license and the renewal thereof.

3305.6 If a practitioner fails to renew the license within sixty (60) days after its expiration, the license shall be deemed to have lapsed on the date of expiration, and the practitioner shall be required to apply for reinstatement and pay the required reinstatement fee.

3305.7 The Director may require an applicant for renewal to provide information on the application for statistical purposes.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3492 (May 13, 1988).

3306 TERM OF A LICENSE

3306.1 The term of a license issued or renewed pursuant to an act listed in §3300.1 is two (2) years and shall expire on the date established by the chapter of this title relating to the particular occupation or profession unless the Director changes the renewal system pursuant to §3306.2.

3306.2 The Director may change the renewal system to a system whereby a license expires on the last day of the month of the birthdate of the applicant for or holder of the license, or to another system, for the administrative convenience of the Director.

3306.3 If the Director changes the renewal system under §3306.2, in order to permit an orderly transition, the term of a license that is in effect on the date of the Director's determination may be extended up to three (3) years.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3493 (May 13, 1988).

3307 REGULATION OF APPLICANTS FOR ANY HOLDERS OF CERTIFICATES OR REGISTRATIONS

3307.1 A board or the Director may take any action against an applicant for or holder of a certificate or registration that a board is authorized to take against an applicant for or holder of a license pursuant to an Act listed in §3300.1.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3493 (May 13, 1988).

3308 REINSTATEMENT OF AN EXPIRED LICENSE

3308.1 This section applies to applicants for reinstatement of an expired license issued under the following:

(a) An act listed on §3300.1; or

(b) A law repealed or amended by an act listed in §3300.1.

3308.2 An applicant for reinstatement under this section shall file an application with a board on the prescribed form and shall pay the required reinstatement fee.

3308.3 An applicant for reinstatement under this section shall demonstrate fitness to resume practice by submitting evidence satisfactory to a board that the applicant has the competency and knowledge of District and federal laws necessary to resume practice

and that the applicant's resumption of practice will not be detrimental to the public interest or the integrity of the occupation or profession.

3308.4 In making a determination pursuant to §3308.3, a board shall consider the following:

- (a) The length of time that the applicant had practiced in the District or another jurisdiction;
- (b) The length of time after expiration of the applicant's license that the applicant was not practicing either in the District or another jurisdiction;
- (c) The applicant's violations of any laws;
- (d) The applicant's present character; and
- (e) The applicant's present qualifications and competency to practice.

3308.5 A board may require an applicant to complete certain educational or training requirements, in addition to any continuing education requirements, prior to or after reinstatement, to ensure that the applicant is competent to practice.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3494 (May 13, 1988).

3309 REINSTATEMENT AFTER REVOCATION

3309.1 A person whose license to practice an occupation or profession has been revoked, or whose application for reinstatement has been denied, shall be ineligible to apply for reinstatement for a period of one (1) year from the date of the revocation or denial unless otherwise provided in the order of revocation or denial.

3309.2 An applicant for reinstatement under this section shall file an application with a board on the prescribed form and shall pay the required reinstatement fee.

3309.3 In addition to the requirements of §3309.2, an applicant for reinstatement shall demonstrate fitness to resume practice by submitting evidence satisfactory to a board that the applicant has the integrity, competency, and knowledge of District and federal laws necessary to resume practice, and that the applicant's resumption of practice will not be detrimental to the public interest or the integrity of the applicant's occupation or profession.

3309.4 In making a determination pursuant to §3309.3, a board may consider, among other factors, the following:

- (a) The nature and circumstances of the conduct, or the mental or physical condition, for which the applicant's license was revoked;
- (b) The applicant's recognition and appreciation of the seriousness of any misconduct;
- (c) The applicant's conduct, or mental or physical condition, since the revocation, including steps taken by the applicant to remedy prior misconduct and prevent future misconduct, or to remedy the mental or physical condition;

- (d) The length of time that the applicant had practiced in the District or another jurisdiction;
- (e) The length of time after expiration of the applicant's license that the applicant was not practicing either in the District or another jurisdiction;
- (f) The applicant's present character; and
- (g) The applicant's present qualification and competency to practice the occupation or profession.

3309.5 A board may require an applicant to complete specified educational or training requirements, in addition to any continuing education requirements, prior to or after reinstatement, to ensure that the applicant is competent to practice.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3495 (May 13, 1988).

3310 FALSE OR MISLEADING COMMUNICATIONS AND ADVERTISING

3310.1 A practitioner shall not make or cause to be made a false or misleading communication about the practitioner's occupation or profession, or services.

3310.2 A practitioner shall not falsely represent that the practitioner is certified by, a member of, or otherwise endorsed by, a professional society, association, or other organization.

3310.3 A practitioner shall not communicate that the practitioner specializes in a particular field of the practitioner's occupation or profession unless the practitioner is in fact a specialist in the particular field or possesses a certificate required by the occupation or profession to be a specialist in the field.

3310.4 Subject to this section, a practitioner may advertise services through media such as a telephone directory, legal director, newspaper or other periodical, radio or television, or written communication not involving personal contact.

3310.5 As used in this section, a communication is "false" or "misleading" if it:

- (a) Contains a material misrepresentation or omits to make a representation necessary to make the statement considered as a whole not misleading; or
- (b) Contains an assertion about the practitioner or the practitioner's occupation or profession, or services, which cannot be substantiated.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3496 (May 13, 1988).

3311 REFERRAL FOR PROSECUTION OF PERSONS COMMITTING CERTAIN OFFENSES

3311.1 A District employee or member of a board shall inform the Director and a board if the employee or board member has good cause to believe that a person has committed

one of the following offenses in connection with an application for a license or in any proceeding before a board:

- (a) Wilfully making a false statement of a material fact under oath at a hearing or other proceeding which the person does not believe is true and in fact is not true in violation of D.C. Code §22-2511 (1987 Supp.) (perjury);
- (b) Wilfully procuring another to commit perjury in violation of D.C. Code §22-2512 (1987 Supp.) (subornation of perjury);
- (c) Wilfully making a false statement of a material fact on an application or other official document that was sworn to before a notary public in violation of D.C. Code §22-2513 (1987 Supp.) (false swearing); or
- (d) Wilfully making a false statement in writing of a material fact which statement could reasonably be expected to be relied upon as true in violation of D.C. Code §22-2514 (1987 Supp.) (false statements).

3311.2 If a board or the Director determines that there is good cause to believe that a person committed one of the offenses listed in §3311.1, the board or Director may refer the matter to the appropriate official for prosecution.

3311.3 All application forms for a license under this title shall contain a notice stating in substance the following:

The making of a false statement on this application or on documents required by this application is punishable by criminal penalties.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3496 (May 13, 1988).

3312 - 3313 [RESERVED]

3314 COMPLAINTS: INVESTIGATIONS

3314.1 A board, on its own motion or on the receipt of a complaint submitted in accordance with §3314.2, shall request the Director to investigate a practitioner if the facts alleged in the complaint, if proven, would constitute sufficient grounds for disciplinary action.

3314.2 The Director, upon receipt of a request from a board of a complaint meeting the foregoing requirements, shall investigate the complaint.

3314.3 A person who desires to file a complaint against a practitioner shall do the following:

- (a) Submit the complaint in writing;

- (b) State the facts or circumstances that form the basis of the complaint;
 - (c) Sign the complaint and state the complainant's name and address; and
 - (d) Mail or deliver the complaint to a board.
- 3314.4 Nothing in §3314.3 precludes a board, on its own motion, from requesting the Director to investigate a practitioner based on information obtained from an individual who does not file a complaint in accordance with that subsection.
- 3314.5 A board may request a practitioner under investigation to respond in writing to any allegations. If the board requests such a response, the board shall inform the practitioner of the following:
 - (a) That the practitioner is not required to respond to the request;
 - (b) That a copy of any response may be sent to the complainant, if any;
 - (c) That the failure to respond will not be held against the practitioner in any subsequent action based on the investigation; and
 - (d) That any response may be used against the practitioner in a subsequent action.
- 3314.6 If a board receives a written response from a practitioner requested pursuant to §3313.5, it may, in its discretion, send a copy of the response to the complainant and request a written reply within a time period determined by the board.
- 3314.7 After considering the facts of a particular case, the complaint, if any, and any response thereof, a board shall take one of the following actions:
 - (a) Refer the complaint to the Director for investigation;
 - (b) Issue a notice of intended action in accordance with §3315;
 - (c) Request that the practitioner attend a settlement conference in accordance with §3322; or
 - (d) Dismiss the complaint.
- 3314.8 If a board dismisses a complaint, it shall give the complainant notice in writing, sent by first class mail, of the dismissal of the complaint within ten (10) days of the action.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3497 (May 13, 1988).

3315 NOTICE OF INTENDED ACTION AND OPPORTUNITY FOR A HEARING

- 3315.1 A board shall give the holder of, or applicant for, a license (except a temporary license) or a person possessing a privilege to practice in the District, notice of and an opportunity for a hearing before the board if the effect of the action would be one of the following:

- (a) To revoke a license, certificate, registration, or privilege;
- (b) To suspend a license, certificate, registration, or privilege;
- (c) To reprimand the holder of a license, certificate, registration, or privilege;
- (d) To impose a civil fine;
- (e) To require a course of remediation;
- (f) To require a period of probation; or
- (g) To refuse to renew a license, certificate, or registration for any cause other than failure to pay the required renewal fee.

3315.2 If a board proposes to take an action of the type set forth in §3315.1, it shall give written notice to the respondent containing the following:

- (a) A statement that a board has sufficient evidence, setting forth the nature of the evidence, which, if not explained, justifies taking the proposed action;
- (b) One of the following statements:
 - (1) That the board may take the proposed action, unless the respondent requests a hearing before the board by a letter addressed to the board, sent by certified mail or delivered in person, within twenty (20) days after service of the notice, and that the board may take the proposed action if the respondent fails to appear at the scheduled hearing; or
 - (2) That the board has scheduled a hearing on the proposed action, setting forth the date, time, and place of the hearing, and that the board may take the proposed action if the respondent fails to appear at the hearing;
- (c) A description of the rights of the respondent at a hearing as specified in §3323.3.

3315.3 Subject to §3315.4, a board shall give an applicant for a license (other than a temporary license) notice of and an opportunity for a hearing before the board if the effect of the action would be one of the following:

- (a) To deny permission to take an examination; or
- (b) To deny a license.

3315.4 An applicant shall not be entitled to notice of or an opportunity for a hearing before a board if the denial of a license or permission to take an examination is based solely on the applicant's failure to meet a qualification over which a board has no discretion, including the following:

- (a) Failure to meet a minimum age requirement;
- (b) Failure to meet an educational or experience requirement where the acceptability of the educational program or quality of the experience is not an issue; or

- (c) Failure to pass an examination.

3315.5 If a board proposes to take an action of the type specified in §3315.3, it shall give written notice to the respondent containing the following:

- (a) A statement that the respondent has failed to satisfy a board as to the respondent's qualifications to take the examination or to be approved for licensure;
- (b) A statement that specifies in what respect the respondent has failed to satisfy a board;
- (c) One of the following statements:
 - (1) That the board may take the proposed action, unless the respondent requests a hearing before the board by a letter addressed to the board, sent by certified mail or delivered in person, within twenty (20) days after service of the notice, and that the board may take the proposed action if the respondent fails to appear at a scheduled hearing; or
 - (2) That the board has scheduled a hearing on the proposed action, setting forth the date, time, and place of the hearing, and that the board may take the proposed action if the respondent fails to appear at the hearing; and
- (d) A description of the rights of the respondent at a hearing as specified in §3323.2.

3315.6 A notice given pursuant to §3315.2 shall be in the form of charges and specifications. A notice given pursuant to §3315.5 shall be in the form of a notice of intent to deny in letter format.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3499 (May 13, 1988).

3316 FAILURE TO REQUEST A HEARING OR FAILURE TO APPEAR

3316.1 If a respondent who was sent a notice of a proposed action pursuant to §3315 does not mail or deliver a request for a hearing within the time and in the manner required under that section, a board may, without a hearing, take the action contemplated in the notice.

3316.2 If a respondent scheduled for a hearing does not appear for the hearing, and no continuance has been granted, a board may receive evidence and hear testimony and may render a decision on the basis of evidence before it.

3316.3 The board may, prior to rendering a decision, upon written request of the respondent and payment of the required fee, send a copy of the transcript or summary of the hearing to the respondent and request proposed findings of fact and conclusions of law from the respondent.

3316.4 The board shall inform the parties of an action taken under this section.

3316.5 A decision of a board shall be supported by substantial, reliable, and probative evidence pursuant to D.C. Code §1-1509(c) (1981).

SOURCE: Final Rulemaking published at 35 DCR 3488, 3501 (May 13, 1988).

3317 HEARING NOTICE PROCEDURES

- 3317.1 If a respondent requests a hearing, a board shall, within twenty (20) days following receipt of the request, notify the respondent of the date, time, and place of the hearing.
- 3317.2 The board shall hold the hearing not less than twenty (20) days following the date of service of the notice unless the board and all of the parties agree to the holding of the hearing at an earlier date.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3501 (May 13, 1988).

3318 SERVICE

- 3318.1 A notice, pleading, order, or decision required by this chapter to be served on a respondent shall be served on the respondent or representative designated by the respondent or by law to receive service of papers. If a respondent has appeared through counsel, service shall be made upon the counsel of record.
- 3318.2 Service on a respondent shall be directed to the last known address of the respondent on file with the Director and shall be completed by one of the following;
- (a) By certified mail, return receipt requested;
 - (b) By personal delivery;
 - (c) By delivery to the address of respondent, or respondent's counsel or agent, on file with the Department, by leaving it at that address with a person of suitable discretion at least sixteen (16) years of age who is employed or resides at that address; or
 - (d) In conformity with an order of a board.
- 3318.3 Service on the board, the Director, or the Corporation Counsel shall be directed to the appropriate office and shall be completed by one of the following methods:
- (a) By certified mail, return receipt requested; or
 - (b) By personal delivery.
- 3318.4 Proof of service, stating the name and address of the person on whom service is made and the manner and date of service, shall be shown by one of the following methods:
- (a) If service was effected by certified mail, the return receipt indicating that the document was accepted, refused, or returned unclaimed;
 - (b) If service was effected by personal delivery, the certificate of the server indicating that the document was accepted or refused; or

- (c) If service was effected pursuant to an order of the board, in the manner provided in that order.

3318.5 The date and time of service shall be established as follows:

- (a) If service is effected by certified mail, it shall be deemed to have been served on the date and at the time shown on the return receipt that the document was accepted, refused, or returned unclaimed;
- (b) If service was effected by personal delivery, it shall be deemed to have been served on the date and at the time on the certificate of service indicating that the document was accepted or refused; or
- (c) If service was effected pursuant to an order of a board, it shall be deemed to have been served on a date and at a time as provided in that order.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3502 (May 13, 1988).

3319 REPRESENTATION

3319.1 A respondent may be represented only by an attorney who is an active member of the District of Columbia Bar, except that a board may permit an attorney who is an active member of the bar of another jurisdiction in the United States to represent a respondent in a particular case.

3319.2 If it appears to a board or an Administrative Law Judge (ALJ) that the issues or facts in a matter before it are so complex that the interests of justice, saving time or facilitating the preparation of an adequate record would be served by the representation of a party by an attorney, the board may urge, but not require, that the party obtain the services of an attorney and may allow that party a reasonable period of time within which to do so.

3319.3 An attorney shall not participate in a representative capacity in any hearing conducted by a board or ALJ until the attorney submits to a board or ALJ a signed statement containing the attorney's name, street address, telephone number, and bar number.

3319.4 An attorney authorized to appear pursuant to this section may sign any paper required or permitted to be filed by this chapter.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3503 (May 13, 1988).

3320 SUBPOENAS

3320.1 The board may issue subpoenas to compel witnesses to appear and testify or to produce books, records, papers, or documents on its own motion or upon the request of a party.

3320.2 The board may require a party requesting a subpoena to demonstrate the relevancy of and need for the subpoena.

3320.3 The board shall issue subpoenas in the name of the Mayor of the District of Columbia. A subpoenaed witness, other than one employed by the District Government, shall

be entitled to a reasonable fee established by the Director, but the fee may not be paid in advance.

- 3320.4 In case of contumacy by or refusal to obey a subpoena issued by a board to any person, a board may refer the matter to the Superior Court of the District of Columbia and request an order by that court to require the person to appear and give testimony or produce books, papers, or other evidence bearing on the hearing.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3504 (May 13, 1988).

3321 MOTIONS AND OTHER PLEADINGS

- 3321.1 Except by leave of a board during a hearing, a party shall make an application for an order or other relief by filing a written motion. A motion shall state with particularity the grounds on which it is based and clearly set forth the order or relief sought. If a motion is supported by memoranda, affidavits, or other papers, the movant shall attach them to and serve them with the motion.
- 3321.2 A copy of each motion, response, opposition, reply, or other pleading filed with a board shall be served on each party, and a certificate of service shall appear at the end of the pleading showing the date and method of service.
- 3321.3 A party may file a response or opposition to a motion within ten (10) days after service of the motion, but a board, in its discretion, may shorten or extend this time, with proper notice to parties. The response or opposition may not include a motion for other affirmative relief against the moving party.
- 3321.4 A reply to a response or opposition may be filed within three (3) business days after service of the response or opposition, but the reply may not reargue propositions presented in the motion or present matters that are not strictly in reply to the response or opposition. No further pleading may be filed except by leave of a board for extraordinary cause.
- 3321.5 A motion or other pleading shall meet the following additional requirements:
- (a) It shall be typewritten on business size eight and one-half by eleven inch (8 1/2" x 11") paper;
 - (b) It shall contain the name of the case and number of the case, if any;
 - (c) It shall be double-spaced, except footnotes and quotations, which may be single-spaced;
 - (d) It shall be signed by the party on whose behalf it is filed or by that party's counsel; and
 - (e) Subject to §3321.6, it shall be accompanied by a number of copies that corresponds to the number of members of a board established by an Act listed in §3301.1, plus one (1), unless a board permits the parties to file a lesser number of copies.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3504 (May 13, 1988).

3322 SETTLEMENT CONFERENCES

- 3322.1 A board may, in its discretion, request a respondent against whom an action is proposed to attend a settlement conference.
- 3322.2 The parties may agree to hold a settlement conference.
- 3322.3 If a respondent agrees to attend a settlement conference, a board shall notify the parties of the date, time, and place of the settlement conference.
- 3322.4 A board may designate a member of a board, its counsel, or an employee of the Department to participate in a settlement conference on behalf of the board.
- 3322.5 The parties at a settlement conference may enter into a negotiated settlement or consent decree that is binding on all parties; Provided, that the settlement or consent decree is approved by the board.
- 3322.6 If a board accepts part, but not all, of the proposed negotiated settlement or consent decree, it may request the respondent to attend another settlement conference.
- 3322.7 A respondent who agrees to a negotiated settlement or consent decree that is approved by a board shall waive all of the respondent's rights of appeal or reconsideration under an Act listed in §3300.1 or rules promulgated pursuant thereto.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3505 (May 13, 1988).

3323 CONDUCT OF HEARINGS

- 3323.1 All hearings before a board shall be open to the public.
- 3323.2 At a hearing before a board, at least a majority of the members of a board shall be required to be present to hear the evidence and render a decision.
- 3323.3 A respondent entitled to a hearing has the following rights:
- (a) To be represented by an attorney in accordance with §3319;
 - (b) To present all relevant evidence by means of witnesses and books, papers, and other means;
 - (c) To examine all opposing witnesses on any matter relevant to the issues; and
 - (d) To have subpoenas issued to compel the attendance of witnesses and the production of relevant books, papers, and other evidence, upon making a written request to a board.
- 3323.4 A board may, grant or deny a motion for a continuance, and shall deny a motion for a continuance unless the motion:

- (a) In the opinion of a board, set forth good cause for a continuance; and
- (b) Is filed at least two (2) business days before the date on which the hearing is to be held, except for extraordinary and unforeseen reasons such as the sudden illness of a party or a party's counsel.

3323.4 Conflicting engagements of counsel, absence of counsel, or the employment of new counsel may be considered to constitute good cause for a continuance of a hearing only if set forth in a motion filed promptly after notice of the hearing has been given.

3323.6 After a hearing, and within time limits established by a board, the parties may submit proposed findings of fact, conclusions of law, and order, and may also submit memoranda of law on issues of law arising during the hearing.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3506 (May 13, 1988).

3324 EVIDENCE AT THE HEARING

3324.1 All testimony at a hearing before a board shall be under oath or affirmation.

3324.2 If any part of the record in any other proceeding previously held before a board, or part of the record in any criminal or civil action, including hearings before any administrative agency, is offered in evidence, a certified true copy of that part shall be presented to the board in the form of an exhibit, unless either of the following requirements is satisfied:

- (a) The record is specified in such manner as to be readily identified, and the person offering the record agrees to supply copies later or when required by a board; or
- (b) There is a stipulation that the record may be incorporated by reference and a board orders that incorporation.

3324.3 A board shall exclude irrelevant, immaterial, and unduly repetitious evidence.

3324.4 A board may take official notice, at the request of a party or on its own motion, of the following:

- (a) The law and rules of the District of Columbia, the United States, or any state or other jurisdiction of the United States; or
- (b) Material facts in the official files of a board, the Department, or other District of Columbia or federal agency; or
- (c) A fact that is not subject to reasonable dispute in that it is generally known within the District of Columbia or is capable of accurate and ready determination by resort to resources the accuracy of which cannot reasonably be requested.

3324.5 If a board takes official notice of a material fact not appearing in the evidence in the record, it shall give a party the opportunity to show the contrary at the hearing or on motion made within five (5) days after the hearing.

3324.6 The parties may, by stipulation in writing filed with a board, agree on the facts or any portion thereof involved in a hearing. The parties may also stipulate the testimony that would be given by a witness if the witness were present.

3324.7 The board may require additional evidence concerning any matter covered by a stipulation.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3507 (May 13, 1988).

3325 BURDEN OF PROOF

3325.1 In a hearing resulting from a proposed action under §3315.1, the District shall have the burden of proving, by a preponderance of the evidence, that the action should be taken.

3325.2 In a hearing resulting from a proposed action under §3315.3, the applicant shall have the burden of proving, by a preponderance of the evidence, that the applicant is qualified to be licensed or certified.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3508 (May 13, 1988).

3326 CONDUCT OF PARTIES AND COUNSEL AT THE HEARING

3326.1 The parties at a hearing shall maintain decorum and good order at all time. A board may exclude or have removed from the hearing room any person violating an order of the chairperson of the board or the presiding official.

3326.2 A board may bar counsel from further participation in a hearing for disruptive conduct.

3326.3 If counsel has been barred from participating in a hearing, a board may proceed with the hearing if consistent with the due process rights of the parties. Otherwise, the board shall adjourn the hearing to give the party whose counsel has been barred an opportunity to secure new representation expeditiously.

3326.4 A counsel who has been barred from participating in a hearing may seek, and a board may grant, reinstatement to participate in the hearing on such terms as the board prescribes. The board shall not permit a reinstatement application to delay the proceedings.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3508 (May 13, 1988).

3327 HEARINGS BY PANELS OF A BOARD

3327.1 A board may authorize a panel of no less than three (3) members of a board to conduct a hearing in any matter that the board is authorized to conduct a hearing.

3327.2 The panel of the board shall have the powers and duties given to the board by this chapter and the applicable Act listed in §3300.1, except the power to render a final decision.

- 3327.3 After hearing the evidence, the panel shall submit a recommended decision to the board. At the same time, the board shall serve the respondent with a copy of the decision in accordance with §3318 and send a copy of the decision to the Corporation Counsel.
- 3327.4 A recommended decision of a panel adverse to a respondent shall contain the following:
- (a) Findings of fact;
 - (b) Conclusions of law based on the findings of fact and application of the laws; and
 - (c) A recommended order.
- 3327.5 A board may accept or reject the recommended decision of the panel in whole or in part.
- 3327.6 If the decision of a board is adverse to the respondent, and the panel that heard the case did not constitute a majority of the members of a board, the board, prior to issuing a final decision, shall serve the respondent with a copy of a proposed decision and give a respondent an opportunity to file exceptions, and written argument in support thereof, with the board within ten (10) days of the date of service.
- 3327.7 A board shall consider any exceptions and argument filed by a respondent pursuant to §3327.7 in issuing a final decision. If the respondent does not file exceptions within the required period, the proposed decision of the board shall become the final decision of a board.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3508 (May 13, 1988).

3328 HEARINGS BY ADMINISTRATIVE LAW JUDGES

- 3328.1 A board may delegate its authority to conduct a hearing to an ALJ pursuant to §103(c) of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Law 6-42, D.C. Code §2703(c) (1987 Supp.), by notifying the Director in writing of the name of the case and the decision of the board to delegate its authority to conduct the hearing.
- 3328.2 The ALJ conducting a hearing has all of the powers and duties of a board, except the power to render a final decision.
- 3328.3 After hearing the evidence, an ALJ shall, within forty-five (45) days, or one-half of the maximum period specified in an Act listed under §3300.1, of the hearing, whichever is shorter, submit a recommended decision to a board. At the same time, the ALJ shall serve the respondent with a copy of the decision and send a copy of the decision to the Corporation Counsel.
- 3328.4 A recommended decision of an ALJ adverse to a respondent shall contain the following:

- (a) Findings of fact;
- (b) Conclusions of law based on the findings of fact and application of the laws; and
- (c) A recommended order.

- 3328.5 A board may accept or reject the recommended decision of an ALJ in whole or in part.
- 3328.6 Except as provided in §3328.7, a board, within thirty (30) days of the recommended decision of the ALJ, shall render a decision and notify the Director, the respondent, and the Corporation Counsel of the action.
- 3328.7 If the decision of a board is adverse to the respondent, the board, prior to issuing a final decision, shall serve the respondent with a copy of a proposed decision and give the respondent an opportunity to file exceptions, and written argument in support thereof, with the board within ten (10) days of the date of service.
- 3328.8 The board shall consider any exceptions and argument filed by a respondent pursuant to §3327.7 in issuing a final decision. If the respondent does not file exceptions within the required period, the proposed decision of the board shall become the final decision of the board.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3509 (May 13, 1988).

3329 RECORD OF A HEARING

- 3329.1 In a hearing conducted pursuant to this chapter, a board shall make a complete record of all evidence presented during the course of a hearing.
- 3329.2 A board shall make a transcript of a hearing on a proposed action specified in §3315.1, unless the parties and the board agree not to have a transcript made.
- 3329.3 A board may make a transcript of a hearing on a proposed action specified in §3315.3, and shall make a transcript upon written request of a party or made at least five (5) days prior to the hearing.
- 3329.4 If a board does not make a transcript of the hearing, it shall make an electronic recording of the hearing.
- 3329.5 A board shall provide a copy of an approved transcript or recording of a hearing to any person requesting it, upon payment of the required fee.
- 3329.6 A party may move to correct a transcript by filing a motion with a board within ten (10) days of receipt of the transcript. If no opposition to the motion is filed, the transcript may, upon approval by the board, be changed to reflect the corrections.
- 3329.7 In the event of disputes with respect to the record, the board shall settle the record and rule on all contested motions to correct the record.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3510 (May 13, 1988).

3330 DECISIONS OF A BOARD

- 3330.1 A board shall render a decision, in writing, no later than ninety (90) days after the date the hearing is completed, unless the Act listed in §3300.1 provides for another period.
- 3330.2 A board may, with the agreement of all parties, extend the period in which it is required to render a decision.
- 3330.3 A decision of a board adverse to a respondent shall contain the following:
- (a) Findings of fact;
 - (b) Conclusions of law based upon the findings of fact and application of the laws;
 - (c) An order; and
 - (d) A statement informing the respondent of the right to have the decision reviewed by the District of Columbia Court of Appeals, and the time within which judicial review is required to be sought according to the rules of that Court.
- 3330.4 A board, in addition to taking other disciplinary action, may revoke an expired license if the decision is based on conduct that occurred while the license was in effect.
- 3330.5 The chairperson of a board may sign an order, decision, or other document of the board on behalf of the board.
- 3330.6 Within ten (10) days after a decision is rendered, a board shall serve a copy of the written decision upon the respondent, or the respondent's counsel of record.
- 3330.7 A board shall issue its findings of fact, conclusions of law, and order in writing except when it determines that the interest of the health, safety, or welfare of the public require that the findings of fact, conclusions of law, or order of the board be issued orally.
- 3330.8 Oral findings of fact, conclusions of law, and an order issued in accordance in §3330.7 are final and shall be recorded as final at the time they are communicated to the parties. Promptly thereafter, a board shall state its oral findings of fact, conclusions of law, and order in writing, and the chairperson shall sign the written decision and serve a copy on all parties or their attorneys of record.
- 3330.9 A board may, on motion by a respondent, stay the imposition of an order pending appeal or reconsideration.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3511 (May 13, 1988).

3334 RECONSIDERATION

- 3334.1 A respondent may file with a board a petition for reconsideration or reopening a hearing within fifteen (15) days after the date of the service of the decision on that party. The petitioner shall serve a copy of the petition on each party.
- 3334.2 Neither the filing nor the granting of a petition shall operate as a stay of a decision unless specifically ordered by a board. A board may grant a stay only upon good cause involving consideration of the likelihood of decisional error, irreparable harm to the petitioning party, the harm to other parties, and the public interest.
- 3334.3 A petition shall state briefly and specifically the following:
- (a) In the case of a motion for a reconsideration, the matters of record or points of law alleged to have been erroneously decided or overlooked;
 - (b) In the case of a motion to reopen a hearing, the reasons that respondent failed to appear at a hearing;
 - (c) The grounds relied upon; and
 - (d) The relief sought.
- 3334.4 If a petition is based in whole or in part on new matter, the matter shall be set forth in an affidavit, containing a statement that the petitioner could not with due diligence have known or have discovered the new matter prior to the hearing before a board.
- 3334.5 A board may, in its discretion, permit or require oral argument upon a petition before the board.
- 3334.6 A board shall grant or deny a petition within forty-five (45) days after the filing of the petition. The failure by the board to act within that period shall constitute a denial of the petition.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3512 (May 13, 1988).

3335 JUDICIAL REVIEW: RECORD ON APPEAL

- 3335.1 A party aggrieved by a final decision of a board may seek review of the decision by the District of Columbia Court of Appeals in accordance with the District of Columbia Administrative Procedure Act, D.C. Code §§1-1501 to 1-1511 (1987 Repl. Vol.).
- 3335.2 Upon receipt by a board of a notice of appeal, the chairperson of the board shall promptly acknowledge receipt. The chairperson shall advise the Director of that receipt.
- 3335.3 The Director shall compile, index, and transmit to the board, if any, the originals or copies of all documents pertinent to the appeal, including the following:
- (a) A copy of the decision from which an appeal is taken;

- (b) A copy of any recommended or proposed decision and any exceptions thereto;
- (c) All documents relied on by the board, including any relevant documents timely submitted to the board by the respondent or by other parties to the hearing; and
- (d) A transcript or summary (in accordance with §3336.3) of all testimony given or statements made during the course of any hearings, conferences, or investigations concerning the matter in dispute conducted by a board prior to the filing of the notice of appeal.

3335.4 The Director shall provide to all parties to the appeal a copy of the Director's index of the record on appeal.

3335.5 The record may be shortened or summarized if, with permission of the court, all parties to the review proceedings so agree.

3335.6 The documents transmitted pursuant to this section, and any supplements thereto, shall be available for inspection by the parties at a location designated by the Director.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3513 (May 13, 1988).

3336 ADMINISTRATIVE APPEALS TO A BOARD OF A DECISION OF AN ADMINISTRATIVE LAW JUDGE

3336.1 This section shall apply to appeals to a board from decisions of ALJ's by persons found to have committed an infraction involving a violation of an Act listed in §3300.1, rules promulgated pursuant thereto, or any other act regulating the person's occupation or profession, which decisions were made pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Law 6-42, D.C. Code §§6-2701 to 6-2723 (1987 Supp.).

3336.2 A notice of appeal from a decision issued by an ALJ shall be sent to the address stated in the decision and shall be delivered or postmarked within fifteen (15) days from the date of service of the final decision.

3336.3 A notice of appeal of a decision shall include the following information:

- (a) That an appeal has been taken;
- (b) A copy or identification of the final decision from which the appeal has been taken;
- (c) A concise statement indicating why the respondent believes the final decision is in error;
- (d) The full name, street address, and the telephone number of the respondent and the respondent's counsel, if any; and
- (e) The signature of the respondent of the respondent's counsel.

- 3336.4 Upon receipt of a notice of appeal, the Director shall promptly acknowledge receipt and compile and index documents pertinent to the appeal, including the following:
- (a) A copy of the decision from which the appeal is taken;
 - (b) All documents relied on by an ALJ, including any relevant documents timely submitted to the ALJ by a respondent or by other parties to the proceedings; and
 - (c) A transcript or summary of all testimony given or statements made during the course of any proceedings, conferences, or investigations concerning the matter in dispute, conducted by the ALJ prior to the filing of the notice of appeal.
- 3336.5 The Director shall transmit the notice of appeal and the documents described in §§3336.4(a) and (b) to the board within ten (10) days of the Director's receipt of the notice of appeal. The Director shall transmit the transcript or summary described in §3338.4(c) as soon as practicable after the transcript or summary is completed.
- 3336.6 The Director shall send the parties a copy of the Director's index of the record on appeal.
- 3336.7 The documents transmitted pursuant to this section, and any supplements thereto, shall be available for inspection by the parties at a location designated by the Director.
- 3336.8 The record may be shortened or summarized if, with permission of the board, all parties to the review proceedings so agree.
- 3336.9 The Director, on motion of a party, or on the Director's own motion, may require or permit a party to supplement the documents transmitted pursuant to this section.
- 3336.10 A board may, in its discretion, permit the parties to appear before it and present oral argument before the board in accordance with such limitations as to time of argument or other restrictions as a board may prescribe.
- 3336.11 The board acting pursuant to this section may affirm, modify, vacate, set aside, or reverse any order or decision of an ALJ.
- 3336.12 A board may hold unlawful and set aside any order or decision of law of an ALJ that it finds to be:
- (a) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (b) In excess of statutory authority or authority under this chapter;
 - (c) Without observance of procedures provided by statute or this chapter; or
 - (d) Unsupported by a preponderance of the evidence in the record of the hearing.
- 3336.13 A party may petition a board to reconsider its decision in accordance with §3333.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3514 (May 13, 1988).

3337 COMPUTATION OF TIME

3337.1 In computing any period of time specified in this chapter, the day of the act, event, or default shall not be counted, and the last day of the period shall be counted unless it is not a business day, in which event the time period shall continue until the next business day.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3516 (May 13, 1988).

3399 DEFINITIONS

3399.1 As used in this chapter, the following terms and phrases have the meanings ascribed:

Administrative Law Judge (ALJ) - a hearing examiner authorized to hear cases pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Law 6-42, D.C. Code §§6-2701 to 6-2723 (1987 Supp.), or designated by the Director to hear a case.

Applicant - an applicant for a license under an Act listed in §3300.1 or rules promulgated pursuant thereto.

Board - a board or commission listed in §3300.1.

Business day - a day other than a Saturday, Sunday, legal holiday, or day on which the Department is officially closed.

Certificate - a certificate issued by a board pursuant to an Act listed in §3300.1.

Chairperson - the chairperson of a board or commission listed in §3300.1 or a person designated by a board to preside at a hearing or act in place of the chairperson.

Day - a calendar day.

Department - the Department of Consumer and Regulatory Affairs.

Director - the Director of the Department of Consumer and Regulatory Affairs, or the Director's designee.

Legal holiday - one of the following holidays:

- (a) New Year's Day;
- (b) Martin Luther King, Jr.'s, Birthday;
- (c) Washington's Birthday;
- (d) Memorial Day;

- (e) Independence Day;
- (f) Labor Day;
- (g) Columbus Day;
- (h) Veterans Day;
- (i) Thanksgiving Day;
- (j) Christmas Day; or
- (k) Any other day designated as a legal holiday by the President, the Congress, or the Mayor or the Council of the District of Columbia, on the actual day the legal holiday is celebrated by the government of the District of Columbia.

License - a license issued by a board pursuant to an Act listed in §3300.1.

Party - a respondent, the Corporation Counsel, the Director, or any other person recognized by a board as a party in a particular proceeding.

Practitioner - a person who holds a license issued by a board or commission listed in §3300.1.

Registration - a registration issued by a board pursuant to an Act listed in §3300.1.

Respondent - a person against whom an adverse action is contemplated, proposed, or taken.

SOURCE: Final Rulemaking published at 35 DCR 3488, 3516 (May 13, 1988).